

Permit # (provided by DEQ): HSG-017

## OPENCUT PERMIT

This permit is issued by the STATE OF MONTANA, DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) of Helena, Montana to Helena Sand and Gravel, Inc. (OPERATOR). Pursuant to Section 82-4-422(1), MCA, the DEQ is authorized to issue Opencut Permits where it is found that the requirements of the law and rules can be carried out and will be observed.

In consideration of the above and other good and sufficient consideration, the following applies to this permit:

1. The DEQ hereby authorizes the OPERATOR to conduct opencut operations, as described in the application which was previously submitted and is hereby approved and made a part of this permit, on 111.5 acres in:

Sec. 19, T. 10N, R. 2W

Lewis and Clark County, Montana, to be known as the Lake Helena Drive site. This permit does not authorize opencut operations other than as described in the application or as described above. Operating without a permit is a violation of law subject to civil penalties. The application is hereby incorporated as a part of this permit for all purposes.

2. OPERATOR shall comply with all requirements of the Opencut Mining Act in Title 82, Chapter 4, Part 4, MCA; and all rules adopted pursuant thereto.

3. OPERATOR shall reclaim all affected land in accordance with the Plan Of Operation, which is part of the application and of this permit. The DEQ may periodically review each plan and require modifications as necessary. Reclamation shall be as concurrent with mining as feasible and will be completed within the time frame specified in the plan.

4. OPERATOR may submit amendment applications to the permit at any time. If approved, the amendments shall be attached to the permit and become a part of the permit for all purposes.

5. OPERATOR (unless the State of Montana, a county, city, or town, or the U.S. Government) has submitted a bond to ensure that the affected land is reclaimed in accordance with the Plan Of Operation. Failure to reclaim in accordance with the plan shall result in forfeiture of the bond. If the bond is revoked or otherwise becomes invalid, the OPERATOR shall submit a new bond within 30 days. Failure to submit a new bond may suspend this permit.

6. OPERATOR shall allow access by the DEQ and its representatives at all times in order to determine whether the terms of this permit are being complied with.

7. If reclamation according to the Plan Of Operation has not been completed in the time specified, the DEQ, after 30 days written notice, may order the OPERATOR to cease mining and issue an order to reclaim. If the OPERATOR does not cease, the DEQ may institute action to enjoin further opencut mining by the OPERATOR and issue an order to reclaim.

8. A person who violates any of the provisions of Title 82, Chapter 4, Part 4, MCA, or any rules or order adopted under this part is subject to the penalty provisions of Section 82-4-441, MCA.

9. This permit is effective upon approval by the DEQ.

10. The attached conditions apply to this permit.

STATE OF MONTANA, DEPARTMENT OF ENVIRONMENTAL QUALITY

Neil Harrington  
Chief, Industrial & Energy Minerals Bureau

6/4/08  
Date

## OPENCUT MINING PERMIT CONDITIONS

Helena Sand and Gravel, Inc.

Lake Helena Drive Site

### 1. Hours of Operation

a. Except as provided in c and d below and in condition 6e, the crushing, gravel extraction, stripping, grading, and site development activities may be conducted only from 7:00 a.m. to 7:00 p.m., Monday through Friday. In addition, these operations may be conducted on Saturday if Saturday operations are necessary to meet a contract deadline or other exigent circumstances. Saturday operations must be limited to the time necessary to meet the contract deadline or other exigent circumstances but may not be conducted before 10:00 am or after 6:00 p.m.. These activities may not be conducted on Sundays.

b. Except as provided in c and d below, the concrete batch plant and the asphalt plant, or both plants, may be operated only from 5:00 a.m. to 8:00 p.m., Monday through Friday. In addition, these operations may be conducted on Saturday if Saturday operations are necessary to meet a contract deadline or other exigent circumstances. Saturday operation of the concrete batch plant must be limited to the time necessary to meet the contract deadline or other exigent circumstances but may not be conducted before 7:00 am or after 5:00 p.m. Saturday operation of the asphalt plant must be limited to the time necessary to meet the contract deadline or other exigent circumstance but may not be conducted before 10:00 am or after 6:00 pm. Neither the concrete batch plant nor the asphalt plant may be operated on Sundays.

c. The permittee may request a temporary variance from the limits in a and b to meet a contract deadline or other exigent circumstance. The request must describe the activities, the proposed hours of operation, the duration of the variance, and methods permittee will use to notify the public of the modified schedule. Permittee may operate under the modified schedule only if the Department, after consulting with the Lewis and Clark County Commissioners, approves the variance.

d. Before granting the request, DEQ may require permittee to provide noise monitoring data. After notice and a public hearing and consultation with the county commissioners, DEQ may extend the operating hours.

### 2. Water Quantity and Quality

a. i. Except as provided in iii, permittee may use groundwater for concrete aggregate stockpile watering or dust control only from October 15 to April 15.

ii. Except as provided in i and iii, permittee may use groundwater only for operation of the batch and asphalt plants, for landscaping, and for its dispatch office.

iii. Permittee may use groundwater on a temporary basis if water from the Helena Valley Canal becomes temporarily unavailable.

b. Permittee may not use water from Prickly Pear Creek for any activity regulated under this permit.

c. HS&G shall install a flow meter on each groundwater well and record the amounts withdrawn at each well. HS&G shall in its annual progress report include the amounts of groundwater used during the previous calendar year.

d. Permittee shall comply with its Work Plan for Monitoring Well Installation and Routine Monitoring (Tetra Tech, 1/31/08) and its Groundwater Sampling and Analysis & Contaminant Detection Response Plan (Tetra Tech, 1/31/08), except that it shall monitor and record groundwater levels on a monthly basis until August 1, 2013 and semi-annually thereafter. Permittee may not mine lower than 5 feet above the highest monitored groundwater level as established by the potentiometric maps produced in accordance with the work plan. Permittee shall provide the monthly water level monitoring data to the Department within 15 business days of the end of each monitoring period.

e. Permittee shall comply with its April, 2007, Spill Prevention, Control, and Countermeasures Plan.

### 3. Air Quality and Odor

a. Permittee shall comply with its approved Dust Mitigation Plan.

b. Permittee shall install, maintain, and operate an effective blue smoke control unit on its batch plant. In the event of a control unit malfunction, permittee may continue to operate the batch plant as long as it maintains compliance with the air quality permit and rules and repairs or replaces the unit as soon as practicable

c. If any truck or other equipment is not to be used for a period of 15 minutes or longer, permittee shall turn the engine off rather allowing the engine to idle until the equipment is used.

#### 4. Soils

a. Permittee shall comply with Work Plan to Conduct Additional Soil Sampling and Analysis, Lake Helena Dive Gravel Pit (Tetra Tech, 1/28/08) to define the extent and magnitude of areas contaminated with elevated lead levels. Permittee shall separately stockpile soil and other material containing 500 ppm or greater levels of lead. Before permittee may dispose of or use in reclamation any soil or other material that contains in excess of 500 ppm of lead, permittee shall consult with the East Helena Lead Education and Abatement Program and submit to and obtain the approval of DEQ and the Montana Office of EPA, for its plan to dispose of or use the soils. If the plan is disapproved, DEQ may, subject to EPA approval, require permittee to leave the contaminated soil on-site in a revegetated berm, bury the contaminated soil on-site, dispose of the contaminated soil in an approved facility, or treat or dispose of it in another manner approved by EPA.

b. Permittee shall place on the area to be reclaimed a 6" to 8" layer of suitable soil.

#### 5. Visual Impacts

a. HS&G shall plant, maintain, and, if necessary, replace vegetation on berms and vegetation planted for visual screening as determined necessary by the Department to minimize visual impacts on surrounding neighborhoods to the degree practicable.

b. HS&G shall screen and direct all lighting used for the operation in such a manner as to avoid deleterious impacts to the adjoining property owners or the neighborhoods.

#### 6. Noise

a. Use of compression brakes by delivery trucks owned and/or leased by the operator on Lake Helena Drive, the intersection of Canyon Ferry Road and Lake Helena Drive, Old Highway 12, and the intersection of Highway 12 and Old Highway 12 is prohibited except in emergency situations.

b. On each day of operation, permittee may not cause noise levels at the four established monitoring locations identified in the Helena Sand and Gravel Lake Helena-Valley Drive Gravel Pit Environmental Noise Study (Big Sky Acoustics, February 29, 2008), that exceed 55  $L_{dn}$  dBA.

c. Except as provided in d below, permittee may not cause an  $L_{eq}$  noise level, measured in 10 minute increments, to exceed 60 dBA at any monitoring location identified in b.

d. The crusher may not cause an  $L_{eq}$  noise level, measured in 10 minute increments, to exceed at any monitoring location identified in b:

- i. 70 dBA during the first three months of crushing operations;
- ii. 65 dBA after the first three months of operation and before the crusher pad is established at 20 feet below grade; and
- iii. 60 dBA after the crusher pad is established at 20 feet below grade.

e. The crusher may not operate on Saturday or on any extended hours until it complies with the 65 dBA requirement.

f. Noise levels at the site shall be monitored on a semiannual basis in accordance with a work plan submitted to and approved by the Department. Semiannual monitoring reports shall be submitted to the Department, as well as being posted on Helena Sand & Gravel's web site. Noise level monitoring must be performed for the first five years of operation or until the Department determines that a well developed and consistent pattern of compliance is established, whichever occurs later. The Department may for good cause require additional temporary monitoring.

#### 7. Traffic

a. Delivery trucks owned and/or leased by the operator may not travel through the Eastgate or Radley school zones located south of the site during the hours of 7:45 am to 9:00 am, and 3:00 pm to 4:00 pm, on school days

b. Permittee shall install a stop sign on its access road at the entrance to Lake Helena Drive.

PROPERTY DESCRIPTION: Portions of Section 19, T10N, R2W; Lewis and Clark County

COMPANY NAME: Helena Sand and Gravel, Inc.; Lake Helena Drive Site

DATE: June 4, 2008

PREPARED BY: Neil Harrington

PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST

DOES THE PROPOSED AGENCY ACTION HAVE TAKINGS IMPLICATIONS UNDER THE PRIVATE ASSESSMENT ACT?

YES	NO	
X		1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?
	X	2. Does the action result in either a permanent or indefinite physical occupation of private property?
	X	3. Does the action deprive the owner of all economically viable uses of the property?
	X	4. Does the action deny a fundamental attribute of ownership?
	X	5. Does the action require a property owner to dedicate a portion of property or to grant an easement? (If answer is NO, skip questions 5a and 5b and continue with question 6.)
		5a. Is there a reasonable, specific connection between the government requirement and legitimate state interests?
		5b. Is the government requirement roughly proportional to the impact of the proposed use of the property?
	X	6. Does the action have a severe impact on the value of the property?
	X	7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally? (If the answer is NO, skip questions 7a-7c)
		7a. Is the impact of government action direct, peculiar, and significant?
		7b. Has the government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?
		7c. Has the government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?

Taking or damaging implications exist if YES is checked in response to question 1 and also to any one or more of the following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if NO is checked in response to questions 5a or 5b.

If taking or damaging implications exist, the agency must comply with § 5 of the Private Property Assessment Act, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.